

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KABALE**

CRIMINAL SESSION CASE NO. 117 OF 2011

KAB-00-CR-AA-07/2011

CRB 214/2011

UGANDA :::::::::::::::::::::::::::::::::::::: ::PROSECUTOR

**VERSUS**

TWONGEIRWE PISON::::::::::::::::::::::::::::::::::::: ACCUSED

**BEFORE HON. JUSTICE J.W.KWESIGA**

**J U D G M E N T**

TWONGEIRWE PISON, the Accused person is indicted for Aggravated Robbery contrary to sections 285 and 286 (2) of the Penal Code Act. It is alleged that on 22<sup>nd</sup> January, 2011 at Nyombe village, Butanda, Kabale District the Accused person robbed Ssewanyana Patrick of Sh. 200,000/= a pair of shoes and a book of agreements and in the process of the said robbery, he used or threatened to use a deadly weapon, a panga and an iron bar on the said Ssewanyana Patrick.

The Accused person was represented by Rev. Bikangiso on state brief while Mr.

Arinaitwe Rajab, Resident State Attorney appeared for the State. The Accused person

pleaded not guilty

to the charges. By virtue of Article 28 (3) (a) of The Constitution of The Republic of

Uganda, The Accused person is presumed to be innocent until proved guilty or until he pleads guilty. The moment an Accused person pleads not guilty like in the instant case, the prosecution has a duty to prove not only that the offence was committed but also that it was committed by the Accused person. In Aggravated Robbery, the State must prove beyond reasonable doubt the following essential elements of the offence:-

- (a) That theft of the named property actually took place.
- (b) That there was use of or threat to use a deadly weapon and in the alternative that violence was used against the victim.
- (c) It must be proved that the Accused person participated in the commission of the offence.

In light of the above I will proceed to examine the evidence adduced in this case. The principle witness in this case is PW 2 Ssewanyana Patrick, the complainant. He testified that he left the trading centre where he had been drinking the local beer, Omuramba, from 4:00 pm up to 8:00 pm when he left for home. He drunk at least four hours. He was attacked after about 20 minutes after 8:00 p.m which was at night and therefore dark. The assailant, the Accused person, came from behind, following him for about 100 metres. The assailant held him and hit him with a knife on the head and took 200,000/= from his pocket. He suffered injuries and spent (3) three days in hospital at Butanda. PW 3 Tumuhimbise Robert examined the complainant on 23<sup>rd</sup> January, 2011. He observed a wound at the back of the complainants head he classified as harm, it was after 4 days of

trauma and he confirmed that the weapon used was a blunt object. Not a knife and could not be a panga.

The medical report is dated 26<sup>th</sup> January, 2011. The request for examination is dated 23<sup>rd</sup> January, 2011 and the attack was on 22<sup>nd</sup> January, 2011 as stated by the victim. My view is that the doctor is mistaken, he could not have examined the victim on 23<sup>rd</sup> January, 2011 and yet the injury on 22<sup>nd</sup> January was already healing as stated in evidence in court. The Police report date indicated the first station Desk report reference as SD/02/23/01/2011 the day for request for medical examination. My view of this evidence is that the examination was on 26<sup>th</sup> January, 2011

the date on the report which makes the injury (4) four days on that date. The findings of the said doctor show that Ssewanyana sustained injuries on the back of the head. In my view this is sufficient proof that there was a great deal of violence used against the victim. It is immaterial whether this violence was with the use of the knife, panga or iron bar. There was no clear description of the weapon used in the robbery. Where no weapon has been recovered or exhibited as the instrument used to would suffice if the same has been adequately described. In the Police Statement exhibited as Defence exhibit D1 the complainant state as follow;

***“He jumped at me and neck tied me, we struggled and fell down over a ridge he had a panga and a metal bar, but the panga fell down before we fell down, so remained with the iron bar which he hit me with on the head injuring me.”***

This statement is corroborated by the medical evidence that the trauma was inflicted with a blunt object. The victim states both in court and the Police statement when he realized he was bleeding he became threatened, collapsed and the attacker searched his pocket and took Sh.

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200,000/= . He explained he did not raise the alarm for fear that the assailant would clear him off with the panga. The Accused person in his defence admitted two important pieces of evidence. The complainant and the Accused persons new each other very well. That on the night of 22<sup>nd</sup> January, 2011, he went to the trading centre where he saw the complainant and that he returned home at about 7:20 pm as opposed to 8:00 pm which the complainant stated as the time he left the trading centre and was followed by the

Accused person. My view is that both the Accused and the complainant were estimating, more of them was giving testimony of exactness as if they were timing each other or the events of the evening, therefore a disparity of 30 minutes is negligible in the circumstances. I have considered the circumstances under which identification of the attacker took place.

I cautioned the Assessors and I have warned myself of the dangers of relying on a single identifying witness who saw what he is testifying to under conditions ordinarily not favourable to correct identifications. Each case must be decided on its own merits because culprits tend to attack

their victims in dark surroundings and in places where no people would identify them. So what are the conditions that assisted the complainant to identify the Accused in this case? The Accused person, in his defence gave a detailed account of how on a different day they walked together in August, 2010. They had a conversation over Sh. 23,000/= that the Accused picked on the way and which they disagreed over. The complainant stated that on 22<sup>nd</sup> January, 2011 he saw the Accused in a bar at the village trading centre. The Accused concedes that he was at the trading centre and they saw each. The complainant stated that they walked together for about 100 metres and at some stage they walked side by side talking. The Accused talked to the complainant told him he was going to guard cabbage garden. He demanded for the balance of the money he had seen the complainant pocketing at the bar. My view of the above evidence shows the following factors:- The two knew each other very well. They knew each other's voice and they actually talked immediately before the attack. They walked so closely for a long time over 100 metres distance. Notwithstanding the dark conditions, given the above circumstances the victim had opportunity

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to identify the Accused person at the scene of crime. The ALIBI set up by the Accused person is of a very weak nature. In the first place an Accused person is of a very weak nature. In the first place an Accused person who sets up an ALIBI does not assume the duty to prove the ALIBI. He has no such duty and it will be a sufficient defence if it gives account of his whereabouts at the time the offence was committed. No person can be in two different places at the same time. It is the duty of the prosecution to destroy the

ALIBI by its evidence of cogent proof of the Accused person's presence at the scene of crime and having had opportunity to convict the offence. In the instant case the Accused person opted to call a witness to prove his ALIBI. He called Twinomujuni (DW 2) who stated that on 22<sup>nd</sup> January, 2011 he saw the Accused at 8:00 p.m in his house. He said it was 8:00 pm because he had just listened to English news on the radio which is normally at 8:00 p.m. This has been considered together with the Accused person's evidence that he returned from where he saw the complainant at about 7:30 p.m. The complainant stated they were together about 8:00 p.m when he attacked him.

The distance between the trading centre and the Accused

person's home is about a % mile according to DW.2. The events and process of robbery depicted by the prosecution evidence show that the attack and the process of the robbery did not take along time. It was quite fast. It was highly probable that it could take place and the culprit would be away with in the described time in a distance of % mile. The Defence of ALIBI set up in this case is destroyed by the evidence of identification. I have warned myself of the possibility of mistaken identification I am aware that corroborative evidence of identification would have been desirable, despite the absence of such additional evidence I am satisfied that the victim did not error in identifying the Accused person as his attacker. Finally, was there an offence of theft? Did the complainant have Sh. 200,000/ = or any other property reported stolen? Sh. 200,000/= as an amount of money that an ordinary person can carry in his pockets as described. The complainant testified that he was in possession of this money to either buy or hire a piece of land to grow crops on it is immaterial how he had earned this money whether by selling potatoes or any other produce. The contradiction with his wife as to whether the money was got by selling sorghum or potatoes is trivial.

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Whether it was for buying or hiring land is also minor, what is material is that he had the money and it was taken in the violent robbery. It is also material that he immediately reported the theft to the first person that saw him after the attack and that was PW 4 Akankwasa Alice, his wife.

The joint opinion of the Assessors is that the prosecution evidence did not prove theft or use of a deadly weapon. I am unable to agree with the Assessors because the prosecution



evidence proved use of violence against the victim. The blunt object caused bodily harm, the victim was admitted to Butanda Health Centre, his head injury was stitched. This is proof of use of violence that suffices in absence of ascertained use of the weapons described by the complainant. The complainant stated he had the money on him, the Accused put his hands in the pocket and took the money permanently. This was sufficient proof of theft.

For these reasons I find that the Assessors did not fully evaluate the prosecution evidence as I have done above I differ in my finding that the Accused person is guilty of Aggravated Robbery as charged. I do hereby convict the Accused person of **Aggravated Robbery C/S 285 and 286 (2) of the Penal Code Act.**

**J.W. KWESIGA**

**JUDGE 6-9-2011 In the presence of:-**

Mr. Arinaitwe RSA for State.

Rev. Bikangiso for Accused on State brief.

Mr. Turyamubona - Court Clerk.

### **SENTENCE**

**STATE:** We do not have any previous record. He has been convicted of a serious offence whose maximum sentence is death. The trend is on increase in this circuit of these offences of robbery. The convict is a young man who should be taught how to live on his

earnings rather than robbery. The Accused has been on remand since 31<sup>st</sup> January, 2011.

**DEFENCE:** The Accused is first offender. He has been on remand for 7 months. He is just 23 years old. He needs a chance to reform. He is remorseful. Long custodial

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sentence does not give a chance to reform. It is my prayer that the Accused be given a sentence that allows him to change. The circumstances in which the offence was committed the Accused should be ordered to refund the money and serve a short sentence.

#### **SENTENCE AND REASONS FOR IT**

I have listened to the submissions made for the Accused person and for the State. I have considered the fact that the Accused is a young man who is capable of reforming and return to society as useful person. I have put in account the fact that he has been on remand for seven months, I will be lenient and sentence the Accused person as follows:-

(a) He is hereby ordered to pay back to Patrick Ssewanyana Sh. 200,000/= Robbed from him.

(b) He shall serve a custodial sentence of **(12) twelve years.**

**J.W. KWESIGA**  
**JUDGE 6-9-2011**